

Attorney General of New Mexico

GARY K. KING
Attorney General

ALBERT J. LAMA
Chief Deputy Attorney General

March 26, 2008

Ms. Rosanne Carbine, President
Animas School Board
C/O Scheur, Yost & Patterson, LLP
125 Lincoln Avenue, Ste. 223
Santa Fe, NM 87501

Re: Determination of Open Meetings Act complaint – Animas School Board

Dear Ms. Carbine:

This determination addresses two complaints that Mr. Dennis Massey filed with our office alleging that the Board of Education of the Animas Public Schools ("Board") may have violated the Open Meetings Act ("OMA"), NMSA 1978, Sections 10-15-1 through 10-15-4. According to his letter, the Board violated the OMA when it: (a) went into Executive Session on March 13, 2007 to discuss the "Certified Staff Master's Degree Policy" and (b) added a voting item to its April 24, 2007 agenda regarding the "Certified Staff Master's Degree Policy." I have reviewed: (1) Mr. Massey's undated 2007 letter and May 1, 2007 letter; (2) the March 13, 2007 meeting agenda and minutes; (3) the April 24, 2007 meeting agenda; (4) the Board's May 17, 2007 response letter; and (5) the OMA. As described in more detail below, it appears that the Board violated the OMA.

Mr. Massey's letter asserted that the March 13 meeting agenda listed an item regarding the Board's proposed policy to require teachers to obtain masters degree (or its near equivalent). The agenda stated: "IX. Superintendent Report (H) Other (1) Certified Staff Master's Degree Policy." According to the Board's response letter, Board President Carbine "asked to start the executive session because she wished to discuss identifiable and potentially confidential personnel matters related to one teacher who would be impacted by the policy change." Letter to Assistant Attorney General Alvin Garcia from Mr. Tony Ortiz, Board counsel (May 17, 2007). The minutes state that Board Member Hatch made a motion to go into executive session pursuant to Section 10-15-1(H)(2). The minutes also state that Board Member Klump, upon returning to open session, "read the new wording recommended for board policy Chapter III.A. Instructional Personnel. 4. Requirements for Employment." He then moved to adopt the new policy wording and the Board approved the motion.

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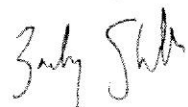
The OMA states that the "limited personnel matters" exception in Section 10-15-1(H)(2) covers "the discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or ... consideration of complaints against any individual public employee." In general, the OMA provides that meetings of a public body held to formulate public policy "including the development of personnel policy, rules, regulations or ordinances" are open meetings. NMSA 1978, § 10-15-1(B). See also OMA Compliance Guide, p. 20 (5th ed. 2004).

The Board did not have a valid exception to the Open Meetings Act to go into executive session to discuss and vote on the Certified Staff Master's Degree Policy. The agenda item and the Board's motion (after the executive session) dealt with policy matters. There was not a vote regarding the promotion or firing of a specific employee or any other personnel matter covered by Section 10-15-1(H)(2).

Mr. Massey's second complaint asserted that the Board amended its agenda at its April 24 meeting to include an action item regarding the Certified Staff Master's Degree Policy. Under that item the Board voted to rescind its March 13 vote on the policy. According to the Board's response letter, the Board "erred by adding an action item to the agenda without giving proper notice...[t]o remedy this issue, the Board will be giving notice and publicly voting on whether to ratify its April 24th action at its upcoming regular meeting." It is our understanding that the Board voted to rescind its March 13 vote at its April 24 meeting (with a properly noticed agenda item).

In conclusion, the Board violated the OMA because its March 13 motion to enter into executive session was invalid, but has subsequently voted (after an initial invalid attempt) to rescind its defective action. Therefore, we will not take any further action on this particular matter. We will, however, keep this complaint in our files in the event future violations by the Board are alleged and proven and suggest an ongoing pattern and practice of Open Meetings Act violations. If you have questions about the specific matters addressed in this letter, or about the Open Meetings Act in general, please let us know.

Sincerely,



Zachary Shandler
Assistant Attorney General

Cc: Dennis Massey